

## **Probation**

### **TABLE OF CONTENTS**

#### **7-01 General Procedures**

A. Referral for Investigation, Recording, and Assignment	7-01-01
B. Fingerprinting	7-01-02
C. Probation Order	7-01-02
D. Scheduling Appointment	7-01-06
E. Maintaining File - Documentation	7-01-06
F. Sending Notice	7-01-08
G. Conducting Appointment with Probationer	7-01-08
H. Immigration Notification	7-01-09
I. Collecting Money	7-01-09
J. Warrantless Arrest	7-01-10
K. Issuing a Bench Warrant or Order to Show Cause	7-01-10
L. Probation Violation	7-01-10
M. Discharging a Probationer	7-01-11
N. Computer Use and Security Issues	7-01-12

#### **7-02 Non-Reporting Probation**

A. Authority	7-02-01
B. Responsibility of the Probation Officer	7-02-01
C. Responsibility of the Probationer	7-02-01
D. Referral Agencies	7-02-01
E. Forms	7-02-03

## **TABLE OF CONTENTS (continued)**

### **7-03 Reporting Probation**

A. Authority	7-03-01
B. Responsibility of the Probation Officer	7-03-01
C. Responsibility of the Probationer	7-03-01
D. Supervised	7-03-02
E. Unsupervised	7-03-03
F. Forms	7-03-04

### **7-04 Appeals From Sentence**

A. Authority	7-04-01
B. Procedure	7-04-01
C. Probation Officer's Responsibility	7-04-01

### **7-05 Probation Violation**

A. Authority for Revocation	7-05-01
B. Determining Nature of Violation	7-05-01
C. Procedure for Arraignment	7-05-03
D. Presentence Report and Recommendation on Violation	7-05-05
E. Hearing	7-05-05
F. Sentencing/Revocation	7-05-06
G. Forms	7-05-07

### **7-06 Transfer**

A. Request for Transfer	7-06-01
-------------------------	---------

## **TABLE OF CONTENTS (continued)**

	B. Response to Transfer	7-06-01
	C. Responsibilities	7-06-01
<b>7-07</b>	<b>Extension</b>	
	A. Authority	7-07-01
	B. Responsibility	7-07-01
	C. Circumstances	7-07-01
	D. Forms	7-07-01
<b>7-08</b>	<b>Discharge</b>	
	A. Authority	7-08-01
	B. Reviewing the File	7-08-01
	C. Conditions Not Met	7-08-01
	D. Conditions Met	7-08-02
	E. Early Discharge	7-08-02
	F. Other Reasons for Discharge	7-08-02
	G. Record of Discharge	7-08-03
	H. Forms	7-08-03
<b>7-09</b>	<b>Protection Against Possible Exposure to HIV, HBV, HCV</b>	
	A. Authority	7-09-01
	B. Request for Testing	7-09-01
	C. Petition for Testing	7-09-02

## **Appendix**

## **Probation**

### **7-01 GENERAL PROCEDURES**

#### **A. Referral for Investigation, Recording, and Assignment**

##### **1. Referrals**

All referrals (sample of form in Section 7 Appendix) to a probation department from a court should be in writing with explicit instructions of what service the probation department is to provide according to the judge's order. It is noted that general internal procedures and paper trails vary widely between the district courts, but referrals to a probation department will generally be for one of the following categories of service:

- a. bond investigations (see Section 2-01)
- b. investigation of need for court appointed attorney (see Section 3-03)
- c. full presentence investigation (see Section 4-02)
- d. abbreviated presentence investigation (see Section 4-02)
- e. alcohol screening and assessment (see Section 5-03)
- f. oral report (see Section 4-02)
- g. information and referral service (see Section 1-01)

##### **2. Recording Procedures**

When a written referral is received from the court, a central record (index card system) may be made within the probation department that includes the following:

- a. the date of the referral;
- b. the referring judge's name;
- c. the court making the referral if the department serves more than one court;
- d. the defendant's name, date of birth, address, and phone number;
- e. the offense; and
- f. the type of probation service required.

Many times there will also be a service deadline date, such as the sentencing date, which should be included on the central logging device.

### **3. Assignment**

A probation officer should then be assigned to complete the required service and that officer's name should also be listed on the central log. If the department is organized into units, the responsible officer may change during the life of the case. For example there may be one probation officer assigned to bond investigations, another to screening and assessment, and another to ongoing supervision.

A probation case file or folder is generally prepared upon initial referral. This file should be placed in the filing system of the assigned probation officer. At a minimum, this file should contain the same identifying information as that on the central record or log. A copy of the Order for Probation (DC 243) should be included.

### **B. Fingerprinting**

MCL 769.1 states that the sentencing of a person convicted of a felony or a misdemeanor punishable by imprisonment for more than 92 days shall not occur until the court has examined the court file and has determined that the fingerprints of the person have been taken.

### **C. Probation Order**

#### **1. Purpose and Authority**

The probation order is a document designed to make written notice of the judge's specific directions for action to all involved in a case including the defendant and the probation officer (SCAO Approved Form DC 243). (See copy of form in the Section 7 Appendix.)

MCL 771.2(3) stipulates that when a person is placed on probation, the court shall fix and determine the period and conditions of probation by order. The order is to be filed or entered as part of the case record.

The probation order delineates the actions required of the defendant and provides the framework for the probation officer's rehabilitative or supervisory actions with the probationer. All items on the document must have been specifically stated on the record by the judge. In People v Sutton, 322 Mich 104, 33 NW2d 681 (1948), it is stated that the order of probation may not be altered, modified, or extended except by the court (judge), and this authority may not be delegated to other (probation officers) or assumed by them.

For the probation order to be correct and complete, the lines of communication between the judge and the person writing the document (probation order) must be open, efficient, and concise so that important details of the order are not neglected. The court reporter or recorder can be an invaluable asset in determining exactly what was ordered if the written communications are unclear.

## **2. Written Record Required**

The probation order must be in writing. It must be definite and certain in its provisions and must be sufficiently clear to enable the probationer to know what to do to comply with it. [People v Sutton supra, People v Hill, 69 Mich App 41, 244 NW2d 357 (1976)]

Oral, unrecorded instructions are not valid since they cannot be filed or entered. [MCL 771.2(3)] If a probation order is ambiguous, it cannot be construed against the probationer in violation proceedings. [People v Sutton supra] For example, when payments toward fines, costs, and restitution are required, the order should be specific about the amount of the payments and the frequency of the payment required by the probationer. If these have not been specified, the probationer's failure to make payments in the desired manner cannot be considered a violation of probation. [People v Davenport, 7 Mich App 613, 152 NW2d 553 (1967)] These statutes, laws, and case references point out the importance of the probation order being written in a careful, legible and complete manner with a great deal of attention to the details of the judge's order. It is recommended that abbreviations and legal jargon be avoided as these may be construed incorrectly by the probationer. In addition, shortcuts on the order, such as specifying AA attendance, but not clearly stating in writing how many meetings must be verified, would be determined as ambiguous.

## **3. Preparation**

The writing of the probation order appears to be a clerical task, sometimes handled by court clerks and sometimes by probation officers. However, this clerical task sets forward the goals to be accomplished during the probation period and can render probation services ineffective if carelessly prepared.

## **4. Conditions**

### **a. Purpose**

Conditions of probation can vary widely based on the rehabilitative needs of the probationer. A court may impose conditions of probation not specified by the probation statute. [People v Dickens, 144 Mich App 49; 373 NW2d 241 (1985)] Conditions should be rationally tailored to the defendant's rehabilitation program. [People v Roth, 154 Mich App 257; 397 NW2d 196 (1986)]

### **b. Statutorily Required Conditions**

MCL 771.3(1) stipulates that the conditions of probation shall include the following:

- 1) During the term of his or her probation, the probationer shall not violate any criminal law of this state, or any ordinance of any municipality in the state.
- 2) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting application for probation.
- 3) The probationer shall report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires.
- 4) The probationer shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate. An order for payment of restitution may be modified and shall be enforced as provided in Chapter IX.
- 5) The probationer shall pay an assessment ordered under MCL 780.905.
- 6) The probationer shall pay the minimum state cost prescribed by MCL 769.1j.
- 7) If the probationer is required to be registered under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.732, the probationer shall comply with that act.

These conditions are printed on the SCAO Approved Order of Probation (Form DC 243). The conditions should be explained to each probationer if not fully stipulated on the probation order being used. These three conditions, mandated by statute, need not be written on the order since a probationer is assumed to know them, and they are considered to be part of every probation order whether written or not. In reality, the probationer will not know these conditions unless specifically informed. Describe them fully to your probationers to avoid ambiguity.

**c. Other Conditions**

Additional conditions of probation are discussed in Section 6-09. These are addressed also in MCL 771.3. Briefly, they include:

- 1) incarceration
- 2) fine, costs, assessments, wage assignment, reimbursement of county expenses
- 3) community service work
- 4) urinalysis, PBT, ignition interlock device
- 5) tether/electronic monitoring/house arrest

- 6) notification to probation officer of any change of address or employment status
- 7) other lawful conditions as circumstances of the case may warrant such as treatment, employment, education, training, restricted travel, restricted associations and sex offender registration.

The "other lawful conditions" will include both prohibitive conditions which forbid certain acts and affirmative actions that stipulate involvement in certain activities expected to assist the probationer in rehabilitative goals. The statute has been elaborated on by both Michigan and federal cases. Conditions must have a "reasonable relationship to the treatment of the accused and the protection of the public". [Porth v Templar, 453 F2d 330 (1971)] In addition, the conditions must be related to the defendant's rehabilitation and not "more likely to impede rehabilitation than to promote it". [People v Higgins, 22 Mich App 479; 177 NW2d 716 (1970)]

If a condition of probation is for the protection of a named person(s), the court shall submit Part 2 of the Order of Probation to local law enforcement for entry into LEIN. The probation department must also submit amendments to the protective condition and notify LEIN to cancel the LEIN entry if the probationer is discharged prior to the expiration date of the order. If probation is extended beyond the original projected expiration date, and if the protective conditions will be extended, the court must also send an amended order with a new expiration date.

Sex Offender Registration is required of persons convicted of specified offenses. The probation officer is responsible for completing the registration form and submitting it to his or her local law enforcement agency or nearest MSP post. The Michigan State Police encourages courts with on-line LEIN access to complete the registration process via terminal rather than in paper format. A supply of forms can be ordered from the Michigan State Police. (See Appendix 7 for a copy of the Michigan Sex Offender Registration form.)

MCL 28.725a imposed a \$35 fee for each new registration. If the court registers the offender on-line in LEIN, the court must collect this fee. If the court sends the registration form to a local law enforcement agency for entry into LEIN, the court should not collect the fee. The agency entering the registration into LEIN will be billed for \$25 of the fee. If the court collects the fee, the \$10 balance remains with the court funding unit.

The court is required to revoke the probation or youthful trainee status of an individual who wilfully violates the Sex Offenders Registration Act. Sex Offender Registration is not required for any person assigned youthful trainee status as of January 1, 2004 for any offense listed in MCL 28.722. [MCL 28.729]



**NOTE:** Payment of costs as a condition of probation is seen as reimbursement to the public and not as punishment [People v Teasdale, 355 Mich 1; 55 NW2d 149 (1952)]. Therefore, statute allows a judge, without a hearing, to set an amount reflecting the costs "reasonably related to the expense of the prosecution" [People v Blachura, 81 Mich App 399; 265 NW2d 348 (1978)] Under MCL 771.3 costs are authorized as a condition of probation only. In addition, costs as a condition of probation are limited by the defendant's ability to pay. [People v Lambert, 151 Mich App 328; 390 NW2d 2; 390 NW2d 652 (1986)] (See also Section 3-03.)

## **D. Scheduling Appointments**

### **1. Responsibility**

The time frame within which an appointment is scheduled, depends on the flow of cases within each court as well as the service requested by the judge. A bond investigation or oral presentence report may require immediate service. A screening and assessment interview may need to be done within 30 days of the referral due to the Letter of Agreement between the Center for Substance Abuse Services and the court as a licensed screening and assessment agency. A full presentence investigation (PSI) or partial PSI depends on the scheduled sentencing date. In some courts, the judge will stipulate the sentencing date and in other courts, this date is set by the probation department.

### **2. Procedure**

Appointments scheduled with a defendant should be noted in the client's probation case file. If the appointment is scheduled by a phone call, the arrangements should be noted in the file, dated, and signed or initialed by the probation officer. Some courts place on the probation order a condition that the defendant schedule an appointment within a certain number of days.

Written correspondence can be sent to the probationer's address designating an appointment time, location, and purpose. A copy should be kept in the probation case file to document the contact. Officers should also record the appointment in their own daily appointment calendar as well as on an office-wide calendar if such a tool exists. This office-wide calendar can be very helpful to clerical staff in answering questions about appointments scheduled within the department.

For purposes of confidentiality, it is recommended that appointment books be locked up when the office is closed and protected in the same manner as the probationers' files. The use of a pen in marking appointments in a daily appointment book assures a permanent record. If appointments are cancelled or postponed, it should be recorded in the probationer's case file along with a notation whether the client or the probation officer required the action.

## **E. Maintaining Files - Documentation**

### **1. Importance**

The probation case file created at the time of referral serves to document that services are being provided as ordered in a responsible and timely fashion. It also verifies whether the probationer complied with the judge's order. With the increasing caseloads in most courts, actions of the probation officer or the probationer should not be left to human memory, but must be documented in writing, in ink, in the probationer's file. The file provides for continuity of service if cases are transferred to a different probation officer due to divisions of labor within the department or the original officer's retirement, resignation, or promotion to different duties.

### **2. Producing a Suitable Record**

In order to produce a suitable record the following conventions should be observed:

- a. write records in ink;
- b. place probationer's name in each entry;
- c. date and initial each entry;
- d. sign worker's full name at the bottom of a completed page of notes;
- e. document contacts chronologically;
- f. write legibly and spell correctly;
- g. use only established and recognizable abbreviations;
- h. record all phone conversations and in-person contacts; and
- i. record cancelled or postponed appointments.

### **3. Record Retention**

Complete probation files must be kept for three years after closure or discharge before being destroyed by approved methods (see Section 9 for more details). (See also Section 8-05 of the Michigan Court Administrative Reference Guide for information about records retention and disposal.) Before records may be destroyed, the Michigan Department of State, Bureau of History must be notified.

#### **4. Active and Inactive Files**

There will be both active and inactive files in most probation departments. An example of an inactive file is when a probationer fails to comply with a judge's order to appear in court and a bench warrant is issued. The case is not discharged from probation, but becomes inactive while waiting for the probationer to be returned to the court on the bench warrant. If the defendant is not returned to the court on a warrant after a period of seven to ten years, the judge may review the warrant for recall and discharge the probationer at that time.

#### **F. Sending Notice**

A notice to appear (SCAO Approved Form MC 06) before the court should be prepared designating the sentencing date, time, and location. It is important to be sure that the defendant and the defendant's attorney are advised of the sentencing date in writing. In some courts this may be the court clerk's job function, and in others it may be a function of the probation officer. Notices should be dated and signed by the preparer, with a copy in the probation file and another copy placed in the court record.

#### **G. Conducting Appointment with Probationer**

##### **1. Time**

The manner of conducting an appointment with a probationer should reflect the gravity of the business to be conducted. The appointment should begin at a specified time, adhered to by both the probationer and the probation officer if at all possible. It will demonstrate a lack of respect for your client if you keep them waiting in the same way their failure to appear on time displays a lack of respect for your time and the court's orders. A reasonable time frame for the interview should be designated with the appointment terminating at a specified time.

##### **2. Setting**

The interview should be held in a quiet and confidential setting so the probation officer can attend to the interview process and the probationer can feel free to disclose information without being overheard. All interviews should be conducted in a nonjudgmental and respectful manner.

##### **3. Stating Purpose of Interview**

The purpose of the interview should be clearly stated with an opportunity for the probationer's questions to be answered. Stating the purpose of the interview limits the topics of conversation and stating how much time is available encourages effective use of the interview time.

#### **4. Ethical Considerations**

In providing services to clients, the goal will be to accomplish the tasks at hand while maintaining absolute respect for the client as well as for the position of the probation officer. To do this, it is very important for probation officers to abide by the following recommended rules of conduct:

- a. Never accept gifts of any size from a client. Any gift may be construed as a bribe.
- b. Never accept gifts from service providers. Protect yourself from charges of graft.
- c. Never fraternize with a client.
- d. Never conduct any type of business transaction with a client.
- e. Maintain a respectful attitude with clients at all times, use language that is professional and in no way demeaning to the client or your role as probation officer.
- f. Never discuss a client's case outside of the confines of your office and be careful even in the office that you cannot be overheard by other probationers being seen by another probation officer in the office.
- g. Lock all your files in a secure cabinet at night, or at other times when your office is unattended, in an effort to ensure the confidentiality of the files is not compromised.
- h. Never give a client money no matter how sad the story.
- i. Never give you home phone number to a client. It sends a message of familiarity and can create dependency.

#### **H. Immigration Notification**

For all defendants born outside the United States, the Immigration Notification (CFJ-204) and a copy of the basic information report shall be forwarded to the United States Immigration and Naturalization Service within 30 days of sentencing as required by PD 06.01.140 for all persons convicted of a crime with a maximum penalty of more than one year in prison, but shall not be prepared for offenders referred for investigation under the Holmes Youthful Trainee Act. Notification by the district court for misdemeanors is optional.

Reports can be sent to United States Immigration and Naturalization Service, Attention: Investigations - ACAP, 333 Mt. Elliot, Detroit, Michigan, 48207.

## **I. Collecting Money**

The Supreme Court Finance Department, through the State Court Administrative Office, has recommended that all money assessed be collected in one place in the court, including fees, fines, costs and other assessments for civil, criminal, traffic, and probation. It is further recommended that employees of the probation department not handle any money. It is stated that probation officers are not authorized by statute to collect fines. [OP Atty Gen, June 4, 1956, No. 2571]

## **J. Warrantless Arrest**

A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe the person has violated a condition of probation imposed by a court. [MCL 764.15(g)] (See also Section 6-06-02, B.6)

## **K. Issuing a Bench Warrant or Summons**

A bench warrant (SCAO Approved Form MC 229) is an order issued by the court for the arrest of a person for violating a court order. If a bench warrant is issued, it tolls the term of probation until the defendant is arraigned on the bench warrant. [People v Ritter, 186 Mich App 701; 464 NW2d 919 (1991) ] A summons (SCAO Approved Form MC 246) is an order to appear as directed and present to the court reasons and considerations as to why certain circumstances should be continued, permitted, or prohibited. Both actions can be initiated from the probation department. The probation file should document the dates initiated or issued.

## **L. Probation Violation**

### **1. Motion for Probation Violation Hearing**

When a probationer fails to comply with any of the terms of the probation order, the probation officer should inform the court of this noncompliance. The probation officer must initiate the probation violation process by Motion, Affidavit and Bench Warrant (SCAO Approved form MC 229) or Motion, Affidavit and Summons Regarding Probation Violation (SCAO Approved form MC 246). Both forms should allege each specific term of the probation order with which the probationer is failing to comply.

The probationer must receive a written copy of the acts or omissions charged against him that constitute a violation of probation. The defendant must receive this motion in sufficient time to obtain counsel and present witnesses. The motion should be specific as to the alleged violations and complete in the list of all terms violated. If the violation involves nonpayment of an outstanding amount owed to the court, the application of the 20% late penalty provided by MCL 600.8403 should be included in the petition. Any term not addressed as part of the motion may not be addressed at the probation violation hearing.

If the noncompliance pertains to nonpayment of restitution, the probation officer must complete a report of nonpayment of restitution (SCAO Approved Form MC 258). (See also Section 6-13).

## **2. Preparing for the Hearing**

Documentation must be gathered to support the allegations during the violation hearing. This type of documentation would include court records of new convictions, police records of new arrests, and in-house files which document the probationer's failure to report to the probation officer or failure to fulfill monetary obligations where indigence has not been established. (See also Section 7-05.)

## **3. Probation Violation Hearing**

If the probationer is found guilty or pleads guilty to the probation violation, the court may continue probation, modify the conditions of the existing probation, extend the probation period, or revoke the probation and impose a jail sentence. The court may require a presentence report (see page 7-05-04, D. for more details).

## **4. Order Regarding Probation Violation**

After the judge has sentenced the probationer on the violation, the judge's order must be documented in writing. If the defendant's probation is revoked, a discharge (SCAO Approved Form MC 245) must be completed. If probation is not revoked, an amended order of probation must be written and filed. In both cases, the defendant should receive a copy of the written document. A copy of these documents should also be placed in the probation case file.

**NOTE:** Probation may not be revoked for failure to pay costs if the reason for nonpayment is the defendant's indigence. [People v Terminelli, 68 Mich App 635; 243 NW2d 703 (1976); People v Lemon, 80 Mich App 737; 265 NW2d 31 (1978)] (See also Section 3-03.)

## **M. Discharging a Probationer**

MCL 771.5(1) provides for the discharge of probationers. When the probation period terminates, the probation officer shall report that fact and the probationer's conduct during the probation period to the court. Upon receiving the report, the court may discharge the probationer from further supervision and enter a judgment of suspended sentence or extend the probation period as the circumstances require so long as the maximum probation period (2 years for a misdemeanor) is not exceeded. SCAO Approved Form MC 245 can be used for this purpose.

MCL 771.6 states that when a probationer is discharged, an entry of the discharge shall be made in the records (court case file and probation file) and the probationer is entitled to a certified copy.

When reimbursement for costs is a condition of probation, the court may only collect money for reimbursement while the probation order is in effect. Once a probationer is discharged from probation, further collection is prohibited. MCL 771.3(5)(a) states that "the court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation." (See also Section 3-03.) However, payment toward restitution shall continue after discharge from probation in accordance with MCL 780.826(13). (See Section 7-08.)

The provision that unpaid supervision fees may not be suspended upon discharge from probation applies only to probation under the supervision of the Department of Corrections. [MCL 791.225a(6)]

## **N. Computer Use and Security**

Time and space does not permit the details of the vast amount of information and resources that exist to explain the many differing approaches to automating the district courts. A court may choose to purchase software packages from vendors or to tap into local governmental funding units and information systems departments which develop specific applications for a particular court.

### **1. Advantages and Disadvantages**

There are advantages and disadvantages to both approaches. Software programs may be altered to fit individual needs but it requires extensive knowledge and skills in computer programming. If resources are unavailable for assistance in implementing a program and providing ongoing backup, other options should be explored.

Service bureaus provide both applications and software but have more control over the format of the information. One distinct advantage with a service bureau is that they are responsible for ongoing maintenance and support.

### **2. Research the Options**

Before purchasing hardware and software, take time to research the options available in relation to the funds available. Contact other courts who are automated, compare the various approaches taken by other courts, and visit the sites. Contact the State Court Administrative Office, the Secretary of State, and the State Police for additional information.

Major points to consider when exploring automation:

#### **a. Cost**

Make sure you secure the total cost estimates for the initial one-time startup. This includes some of the following items:

- 1) hardware

- 2) software packages
- 3) cable and phone line hook-ups
- 4) terminals - color or monochrome
- 5) personal computers - color or monochrome
- 6) printers - dot matrix or laser
- 7) training
- 8) paper and computerized forms
- 9) processing fees of service bureaus
- 10) maintenance costs for all hardware and related services
- 11) costs attributed to change in office environment
- 12) modems or controllers
- 13) equipment for backing up data

**b. Security**

This is the most critical aspect to consider before making a purchase. If the system is on-line, other people can access vital information. There are many different security levels that may be built into a software package. Service bureaus will work closely with courts to determine who should have access to what information and when. There are also security issues associated with editing of data and with networks.



## **7-02 NON-REPORTING PROBATION**

### **A. Authority**

MCL 771.3(1)(c) states that a probationer shall make a report to the probation officer on a monthly basis or as often as the probation officer may require. The report may be either in person or in writing. Non-reporting probation is most effectively conducted through written documents.

### **B. Responsibility of the Probation Officer**

#### **1. Monitoring the Probationer**

The probation officer is responsible for informing the client of all terms of probation as written on the order, facilitating the defendant's compliance with these terms, monitoring the probationer's progress, and informing the court of the defendant's conduct during the period of probation when the probation is terminated. Similarly, if the probation officer believes that the probationer has violated the terms of probation during the term of non-reporting probation, the officer should bring probation violation or revocation procedures (SCAO Approved Form MC 229 or MC 246).

#### **2. Administrative Duties**

The officer is responsible for documenting the probationer's compliance with the order. Requiring a monthly written report with attachments such as verifications for treatment, meeting attendance, payments to the court, pay stubs to prove employment, and hours logged in community service will assist the probation officer in this documentation. The probation case file should note when these written reports and other documents are received. A date stamp may also be affixed to the reports as they are received.

### **C. Responsibility of the Probationer**

In all cases the probationer is required to follow the seven conditions of probation mandated in MCL 771.3 (see Section 7-01, page 7-01-04). There will probably be other terms on the probation order which may include assessment of fines and costs, community service work to be performed, or a specified treatment program to complete. The probationer is responsible to comply with any other conditions as the order mandates in writing.

### **D. Referral Agencies**

It is necessary for the probation officer to know the referral agencies within their geographic area so treatment programs, educational or training programs, and community service opportunities can be found. (See Section 1-01, page 1-01-02 for more on this case management function.)

## **1. Listing of Community Resources and Referral Agencies**

The probation department should maintain a list of community resources and referral agencies. Some examples are:

- a. Substance Abuse Treatment Programs
  - 1) inpatient
  - 2) intensive outpatient
  - 3) outpatient counseling, especially those who provide services to low-income or indigent clients
  - 4) didactic/educational programs
- b. Support Group Meetings
  - 1) Alcoholic Anonymous (AA), Narcotics Anonymous (NA), Gambler's Anonymous (GA), Cocaine Anonymous (CA), etc.
  - 2) Adult Children of Alcoholics (ACOA)
  - 3) support groups for situational traumas such as loss of job, divorce, or death of a loved one
- c. Mental Health Agencies for evaluation and treatment
- d. Employment and Training Programs
- e. Adult Education/High School Completion Program
- f. Treatment Facilities for batterers and abused spouses
- g. Shelters for the homeless and for abused women and children
- h. Community organizations willing to provide community service work opportunities for probationers

## **2. Other Resources**

### **a. Substance Abuse Service Delivery Network Directory of Programs**

One resource for the probation officer is Michigan's Substance Abuse Service Delivery Network Directory of Programs. This is a listing of all substance abuse treatment programs licensed by the Center for Substance Abuse Services.

The listing includes the name of the program, address, phone numbers, types of services provided, and whether or not the State has awarded grants to the agency to provide services to low-income or indigent clients. This listing can be obtained from:

Michigan Resource Center  
111 W. Edgewood Blvd.  
Suite 11  
Lansing, MI 48911  
(517) 882-9955  
FAX (517) 882-7778

**b. United Community Services of Metropolitan Detroit**

Some locales also prepare service directories for their specific geographic area. United Community Services publishes an extensive listing of services for the metropolitan Detroit area with agencies listed primarily in Wayne, Oakland, and Macomb Counties. Contact United Community Services of Metropolitan Detroit for availability and costs. Some counties will also provide resource listings. To get a listing for your area contact your county government or the local United Way.

**c. Non-Profit Organizations**

**1) Community Service Sites**

The probation department should develop local listings of non-profit organizations who will provide community service work opportunities for probationers. It is helpful to establish a specific contact person at the community service site so communications between the probation officer and the site can be consistent. An organization may be more willing to accept probationers for community service work if the contact person knows they will have the support of the probation department if the probationer causes them any problems.

**2) Other Support Services**

Many of the same organizations that provide community service placements may also provide services that will be of assistance to the probationer such as transportation, shelter, food, and financial assistance. The probation officer needs to know what services these organizations provide and how to help probationers to access them.

**E. Forms**

There are no SCAO Approved forms for nonreporting probation procedures. The probation department may want to develop forms for their own needs. A few examples include:

1. A.A. Verification
2. Monthly Written Report
3. Community Service Verification

Examples of the forms can be found in the Section 7 Appendix.

## **7-03 REPORTING PROBATION**

### **A. Authority**

MCL 771.3(1)(c) states that a probationer shall make a report to the probation officer on a monthly basis or as often as the probation officer may require. The report may be either in person or in writing. Reporting probation is conducted through face-to-face contacts and interviews.

### **B. Responsibility of the Probation Officer**

#### **1. Monitoring the Probationer**

The probation officer is responsible for informing the client of all terms of probation as written on the order, facilitating the defendant's compliance with these terms, monitoring the probationer's progress, and informing the court of the defendant's conduct during the period of probation when the probation is terminated. Similarly, if the probation officer believes that the probationer has violated the terms of probation during the term of reporting probation, the officer should bring probation violation or revocation procedures (SCAO Approved Form MC 229 or MC 246). All monitoring is done through face-to-face contacts and interviews.

#### **2. Appointments**

Scheduled appointments should be documented in the probation case file, noting that the appointment was arranged by phone or correspondence. Any cancelled appointments should be noted as well, identifying who cancelled the appointment, why the appointment was cancelled, and the date and time of cancellation. The probation officer should note in the probation case file when a probationer fails to appear for an appointment.

During the appointments, the probation officer is responsible for inquiring about the probationer's compliance with all conditions specified in writing on the probation order.

#### **3. Administrative Duties**

The officer is responsible for documenting the probationer's compliance with the order. Although the probationer is not required to prepare a monthly written report, written verifications for treatment, meeting attendance, payments to the court, pay stubs to prove employment, and hours logged in community service should be placed in the file to support the written case record prepared by the probation officer.

### **C. Responsibility of the Probationer**

In all cases the probationer is required to follow the seven conditions of probation mandated in MCL 771.3. (See Section 7-01, page 7-01-04.) There will probably be other terms on the probation order which may include assessment of fines and costs, community service work to be performed, or a specified treatment program to complete. The probationer is responsible for complying with any other conditions as the order mandates in writing including taking part in scheduling appointments and making him or herself available to meet with the probation officer at the scheduled time.

### **D. Supervised Probation**

#### **1. Regular Supervision**

Regular supervision of a reporting probation client would generally involve face-to-face contact between the probationer and an assigned probation officer once a month. At this meeting problems and progress regarding the terms of probation are discussed. Verifications of other court-ordered activities should be presented by the probationer; copies should be placed in the case record.

#### **2. Intensive Supervision**

In some courts, certain probationers who are at high risk of repeat offenses may be placed on intensive supervision by an assigned probation officer. This type of supervision requires multiple weekly contacts with the probationer to closely monitor compliance and to provide support for the probationer's attempts to abide by the conditions of probation. Regular contacts may also be made with the probationer's employer, educational facility, community service site, and family members.

#### **3. Electronic Monitoring/Tether**

Electronic monitoring and tethering are also commonly known as house arrest. This method of supervising a probationer vastly restricts the client's freedom of movement during certain hours of the day but allows the probationer to continue to live in the community, work or attend school, support themselves or their families, and have access to community treatment or training resources. The probationer is restricted to the home except for certain prescribed activities during specified time periods. The house arrest and tethering programs should be specifically ordered by the judge stipulating that the probationer be placed on house arrest, the hours of unrestricted movement to be allowed and the duration of the term of house arrest. (See also Section 6-07, D.)

There are various types of electronic monitoring systems. Local service providers can be contacted for the specifics of their programs including fees which the probationer is responsible for paying. (See the Appendix in Section 9 for a list of service providers.) A description of three systems follows:

**a. Transmitter**

This system requires the probationer to wear a "transmitter" on a legband that verifies the probationer's location through radio frequency signals to a "receiver" within that person's home. This receiver searches for the transmitter at regular intervals and if it is unable to find the transmitter within its range, the receiver communicates this to the system's monitoring computer. This system has been used without phone lines in the home, but it is not as effective this way because information about the probationer's absence from the receiver's range cannot be immediately logged with the monitoring computer without use of a phone line. The receiver's range can vary, but most typically is a maximum of a 150 foot radius.

**b. Wristlet and Phone Verifier**

This system requires the probationer to wear an electronic device on either a wristband or a legband. The device, often called a wristlet, cannot be removed by the probationer without damaging the equipment. When the monitoring system's computer automatically dials the client's phone, the client must insert the wristlet device into a "verifier" attached to the phone which then sends an electronic message back to the base station indicating that the individual is at home and answering the phone. There is also voice verification through this system as the calls are taped. The calls can be made a specified number of times each day during hours when the probationer is to be at home as ordered by the court. The time of the calls will always vary so the client does not know when to expect them.

**c. Visual Telephone**

This system makes use of a visual telephone which is placed in the probationer's home and connected to the telephone. Again, random phone calls are made to the probationer's home, and when the individual receives the call, he or she must "send" an image (a still picture) of themselves to the base station computer to verify their presence in the home. This system can also be set up to have a breathalyzer attached. The visual telephone will show an image of the probationer blowing into the breathalyzer and provide the blood alcohol level at the time of the random phone call.

**E. Unsupervised Probation**

Some courts may place probationers on a totally unsupervised probation term with no personal or written contacts required except a final review which verifies the probationer has completed or refrained from certain activities as ordered by the judge.

**F. Forms**

There are no SCAO Approved forms for reporting probation procedures. The probation department may want to develop forms for their own needs. A few examples include:

1. A.A. Verification
2. Monthly Written Report
3. Case Notes Log
4. Order for Electronic Monitoring

Examples of the forms can be found in the Section 7 Appendix.



## 7-04 APPEALS FROM SENTENCE

### A. Authority

The Michigan Supreme Court in People v Pickett, 391 Mich 305; 215 NW2d 695 (1974), established that a probationer has a right to appeal either an order of probation or a revocation.

MCR 6.445(H) states that a probationer has a right to appeal from a sentence of incarceration imposed under MCR 6.445(G) if the underlying conviction occurred as a result of a trial or the right to file an application for leave to appeal if the underlying conviction was the result of a plea of guilty or nolo contendere. These are specifically for offenses punishable by incarceration of 6 months or more.

Sentences are appealable based on an error of law only. They are not appealable because a probationer is resistant to the stipulations. The order or judgment of a district or probate court may be reviewed only by an appeal to circuit court. [MCR 7.101(A)(2)] An appeal to circuit court may be taken within 21 days from the date of sentence as noted on the Advice of Rights (SCAO Approved Form DC 213). (See the Section 7 Appendix for a copy of the form.)

### B. Procedure

There are no court rules applicable to misdemeanor cases which explain the procedures for sentencing and appointment of appellate counsel; district courts can follow the procedure specified in MCR 6.425, however, they are not required to.

### C. Probation Officer's Responsibility

The probation officer **has no responsibility** regarding a probationer's desire to appeal from a sentence. However, a probation officer will probably hear the probationer's dissatisfaction with a sentence. Probation officers should simply advise a probationer who has a complaint to seek prompt legal counsel or refer to a low-cost legal aid service for legal advice. This Advice of Rights (SCAO Approved Form DC 213) can be provided to a probationer if the original has been lost or misplaced.

## **7-05 PROBATION VIOLATION**

### **A. Authority for Revocation**

Probation is a form of leniency; it is not an automatic right, and it can be revoked. [MCL 771.4]

If it appears to the sentencing court that a probationer is likely to engage in an offensive or criminal course of conduct again during the period of probation, the court may revoke probation.

The court may also revoke probation if it determines the public good requires it. All probation orders can be revoked in any manner the court considers appropriate whether for a violation or attempted violation of a condition of probation or for any other type of antisocial conduct or action. While probation can be revoked without a violation, this section discusses only those revocations resulting from violations or attempted violations or probation.

When probation is granted, a defendant agrees to the terms and understands that for certain acts of misconduct his or her probation may be terminated. When brought before the court charged with a violation of probation, a defendant is not charged with a new crime but with a violation of the agreement with the court.

Probation revocation proceedings cannot be commenced after the maximum period of probation permitted by law. [People v Wakefield, 46 Mich App 97; 207 NW2d 461 (1973)]

The sentencing court does not lose power to revoke the defendant's probation due to the fact that the defendant violated the terms of his or her probation and managed to evade apprehension until after expiration of the maximum period of probation.

[People v Ritter, 186 Mich App 701; 464 NW2d 919 (1991)]

The maximum period of probation in misdemeanor cases found in district court probation offices is 2 years except with stalking, which is five years. (See also Section 6-09 and page 7-05-02 for additional information.) [MCL 771.2a]

### **B. Determining Nature of Violation**

#### **1. Definition of Violation**

A violation of the terms of probation is either an act or the omission of an action by a probationer where he or she fails to abide by all terms specifically set forth in the probation order. A revocation cannot be based on conditions which are not prescribed by statute or which have not been included in the order of probation as entered and filed. [People v McNeil, 104 Mich App 24, 303 NW2d 920 (1981)] This case reinforces the importance of carefully and specifically prescribing all the judge's orders on the order of probation when it is written. Failing to do so can weaken the probation officer's position later.

A revocation cannot be based on an indigent probationer's inability to make payments as ordered as a condition of probation. [People v Courtney, 104 Mich App 454, 304 NW2d 603 (1981) and People v Baker, 120 Mich App 89, 327 NW2d 403 (1982)] The court may, however, require a probationer to make a good faith effort to find a job in order to make ordered payments.

## **2. Evidence**

The acts or omissions of the probationer must be established by evidence collected by the probation officer and presented to the court. The evidence may include such items as:

1. court records of new convictions;
2. police reports or a police officer's testimony;
3. case records reflecting the probationer's failure to report to probation;
4. court records indicating the probationer failed to pay fines, costs, or restitution as assessed (if not indigent); or
5. lab reports indicating the probationer has used drugs or alcohol.

A careful review of the probationer's order and file will help the probation officer to decide what evidence must be collected to substantiate the allegation of a violation in the court. In People v Baines, 83 Mich App 570, 269 NW2d 228 (1978), it was established that violation of a condition of probation need only be shown by a preponderance of evidence. This preponderance of evidence rule is less stringent than establishing guilt beyond a reasonable doubt and can mistakenly lead to basing violation charges on an arrest for which the probationer has not yet been convicted. A probationer's term of probation may be revoked solely on the basis that the probationer has been arrested if there are verified facts in the record by which the court can find a violation of probation by a preponderance of evidence.

## **3. Preparing and Serving the Motion**

The probation officer prepares a Motion, Affidavit, and Summons Regarding Probation Violation and Order (SCAO Approved Form MC 246) or a Motion, Affidavit, and Bench Warrant (SCAO Approved Form MC 229) depending upon the court's preference. The motion must state the specific violations which the officer believes have occurred. Each condition of probation alleged to be violated should be listed in separate statements. The completed motion should be presented to the judge for approval and signature.

The Motion and Affidavit must be countersigned by a deputized clerk or a notary. (MCR 3.606, 2.113, People v Schref, 152 Mich App 410]

A violation of conditions reasonably necessary for the protection of one or more named persons which has been entered on LEIN in accordance with MCL 771.1(2)(o) and (5) must be brought to the court by petition. Law enforcement does not have the authority to arrest a probationer without warrant for violating these conditions. The entry on LEIN merely provides a mechanism for law enforcement to notify the probation officer or court that a probationer has violated the condition. The probation officer must then prepare a motion and affidavit regarding alleged probation violation and order or a motion and bench warrant for the court as required under MCR 3.606 and MCR 6.103(B) and (C). (See also Section 6-06, page 6-06-02).

People v McNeil supra also requires that conduct to be considered in the violation hearing must be charged on the petition alleging the probation violation. A court's decision to revoke probation cannot be based on uncharged conduct. Therefore, a careful review of the probationer's compliance with all terms of probation should be made before preparing the petition. For instance, it may be obvious to the probation officer that treatment has not been verified; however, if current LEIN and SOS records are not obtained, the officer may omit an important fact such as a new offense by the probationer during the probation term. If this new offense is not included in the motion as presented to the probationer, it cannot be considered at the violation hearing.

## **C. Procedure for Arraignment**

### **1. Issuing Summons or Warrant**

On finding probable cause to believe that a probationer has violated a condition of probation, the court may: [MCR 6.445(A)]

- a. issue a summons (SCAO Approved Form MC 246) in accordance with MCR 3.606, 6.103(B) and (C) for the probationer to appear for arraignment; or
- b. issue a warrant (SCAO Approved Form MC 229) for the arrest of the probationer. An arrested probationer must be brought immediately before the court for arraignment.

### **2. Arraignment on the Charge**

#### **a. Advice of Rights**

At the arraignment on the violation, the court must give the probationer written notice of the alleged violation and must advise the probationer of the right to contest the charge at a hearing and of the right to an attorney. If the probationer cannot afford an attorney, the court must advise the probationer that the court will appoint one at public expense. [MCR 6.445(B)]

Even though a probationer charged with probation violation has waived the assistance of a lawyer, the court must advise the probationer of the right to an attorney at each subsequent proceeding. [MCR 6.005(E) and MCR 6.445(D)]

In People v Belanger, 227 Mich App 637; 576 NW2d 703 (1998), it is stated that waiver of counsel procedures set forth in People v Anderson, 398 Mich 361; 247 NW2d 857 (1976) and MCR 6.005, specifically MCR 6.005(D), do not apply in probation revocation proceedings, but only that if counsel is waived, that the trial court must thereafter comply with MCR 6.005(E). See also People v Kitley, 59 Mich App 71, 73; 228 NW2d 834 (1975), People v Rial, 399 Mich 431; 249 NW2d 114 (1976), and People v Ritter, 186 Mich App 701, 706; 464 NW2d 919 (1991).

In People v Radney, 81 Mich App 303, 265 NW2d 128 (1978), it is stated that before a defendant may waive a hearing on the charges and admit to the violation of probation, the defendant must be informed of the right to a contested hearing and that there is an alternative to admitting the violation.

**b. Release from Custody**

The court must determine what form of release, if any, is appropriate. If the probationer is held in custody, the hearing must be held within 14 days after arraignment or the court must order the probationer released from custody pending the violation hearing. [MCR 6.445(B)(4) and MCR 6.445(C)]

**c. Scheduling the Hearing**

The court must set a reasonably prompt hearing date or postpone the hearing at arraignment. The postponement of the hearing may be necessary when the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution and the court is awaiting the outcome of that prosecution. [MCR 6.445(B)(5) and MCR 6.445(C)]

**3. Pleading Guilty at Arraignment**

Under MCR 6.445(F), before accepting a guilty plea at the arraignment, the court must advise the probationer of several provisions as follows:

- a. that by pleading guilty, he or she is giving up the right to a contested hearing;
- b. if the probationer decides not to retain an attorney, the probationer must be informed that he or she is giving up the right to legal assistance at the arraignment; and
- c. the maximum possible jail sentence for the offense.

The court must also ascertain that the probationer's plea is understandingly, voluntarily, and knowingly made and must establish factual support for a finding the probationer is guilty.

## **D. Presentence Report and Recommendation on Violation**

### **1. Requirement for Presentence Report**

The district court is not required to consider an updated presentence report before sentencing a probationer who has violated probation. The portion of MCR 6.445(G) requiring a presentence report pertains to felony cases only where the probationer can be sent to prison. [People v Crook, 123 Mich App 500; 333 NW2d 317 (1983)]

When a probationer is sentenced only to the county jail, an updated presentence report is not required. [People v Blount, 130 Mich App 804; 345 NW2d 203 (1983)] The judge, however, may request that an updated presentence report be completed, and the rule for content should be followed as in the original presentence report. (See Section 4-04 for more details.) [MCR 6.425 and MCL 771.14]

### **2. Recommendation**

In considering recommendations as part of an updated presentence report, the maximum sentence which may be imposed for a probation violation is the same as the maximum sentence for the underlying offense for which probation was originally imposed. [MCL 771.4] Probation is not a "sentence" which can be imposed again after revocation.

The maximum probation which can be imposed is a cumulation of two years. [People v Williams, 39 Mich App 402, 198 NW2d 27 (1972)] A brief probation term may be extended to the maximum at any time as the result of revocation; however, if a probationer violates probation towards the end of a two year probation term, probation cannot be extended because the two year maximum has already been imposed.

## **E. Hearing**

### **1. Presiding Judge**

Probation violation hearings should be held before the original judge if possible. If the probationer does not motion the court for disqualification of a new judge in a timely manner, it is not considered prejudice against the probationer if the original judge does not conduct the probation violation hearing. [People v McIntosh, 124 Mich App 705, 335 NW2d 129 (1983)] In People v Manser, 172 Mich App 485; 432 NW2d 348 (1988), it was determined that a defendant's conviction for a probation violation be reversed where a defendant objected to proceeding before a different judge than the one who had imposed sentence and there was no showing that the previous judge was unavailable or unable to act.

## **2. Conduct of Hearing**

There are minimum due process requirements the court should observe at the hearing:

- a. A written notice of the specific violations must be provided to the probationer.
- b. Evidence against the probationer must be disclosed to the probationer.
- c. The probationer must be given an opportunity to be heard in person, to present evidence, and to examine and cross-examine witnesses.
- d. The probationer must be advised of the right to an attorney and that if unable to afford one, the court will appoint one at public expense.

[MCR 6.445(D) and (E)]

## **3. Findings of the Court**

At the conclusion of the hearing, the court must find the facts specially, state its conclusions of law separately, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

[MCR 6.403 and MCR 6.445(E)]

## **F. Sentencing/Revocation**

### **1. Basis**

- a. A proceeding for probation revocation has two steps:
  - 1) a factual determination that the violations charged in the petition of probation violation have occurred; and
  - 2) a discretionary determination that proven charges warrant revoking probation.
- b. If the court finds that the probationer has violated a condition of probation or if the probationer pleads guilty to a violation, the court may:
  - 1) continue probation;
  - 2) modify the conditions of probation, including a term of incarceration;
  - 3) extend the probation period; or

- 4) revoke probation and impose a sentence of incarceration.

The probation officer should consider each of these options when making their recommendations.

[MCR 6.445(G)]

## **2. Right to Counsel**

The probationer must be advised of the right to an attorney and that if unable to afford one, the court will appoint one at public expense. [MCR 6.445(D)]

In People v Hazen, 19 Mich App 576, 172 NW2d 860 (1969), it was stated that the right to counsel must be afforded where the revocation hearing includes sentencing. The probationer should have reasonable opportunity obtaining counsel of his or her own choosing. If indigent, the court is responsible for appointing counsel.

The sentencing court may order the probationer to pay the costs of an appointed attorney as a condition of probation. [MCL 771.3]

## **G. Forms**

1. Notice to Appear (SCAO Approved Form MC 06)
2. Motion, Affidavit, and Summons Regarding Probation Violation (SCAO Approved Form MC 246)
3. Motion, Affidavit, and Bench Warrant (SCAO Approved Form MC 229)
4. Petition and Order for Court Appointed Attorney (SCAO Approved Form MC 222)
5. Advice of Rights, Revocation of Probation (sample)

Examples of the forms can be found in the Section 7 Appendix.



## **7-06 TRANSFER**

### **A. Request for Transfer**

The vast majority of cases requiring transfer at the district court level will be within the State of Michigan only. To transfer a probationer, the sentencing court must send a letter requesting supervision by the court where the probationer is residing. A copy of the probation order and the presentence report may accompany the request letter.

### **B. Response to Transfer**

Upon receiving an affirmative response accepting the transfer, the sentencing court notifies the probationer of the transfer, the location and phone number of the new probation department, and the name of the person to contact at the supervising office. The notice should make clear it is the probationer's responsibility to contact the supervising office immediately.

### **C. Responsibilities**

#### **1. In-State**

##### **a. Fines, Costs, Restitution, and Supervision Fees**

###### **1) Sentencing Court**

If there are fines, costs, and restitution assessed as part of the probation order, payments should be made to the sentencing court.

###### **2) Supervising Court**

The supervising court will collect and retain any oversight fees assessed as part of the probation order.

##### **b. Violations, Amendments, Bench Warrants, and Discharges**

###### **1) Sentencing Court**

###### **a) Amendments**

It is the responsibility of the sentencing court to proceed on making needed amendments to the probation order when notified of this need by the supervising court. An amended order (SCAO Approved Form MC 244) should be forward to the supervising court.

**b) Violations**

If the supervising court notifies the sentencing court that a probation violation may have occurred, the sentencing court is responsible for starting the probation violation hearing procedure. If needed, the sentencing court is responsible for issuing any bench warrant.

**c) Discharges**

If the sentencing court receives a final report from the supervising court indicating that all conditions of probation have been satisfactorily met, the sentencing court must process the probationer's termination from supervised probation. A copy of the petition and order for discharge (SCAO Approved Form MC 245) should be sent to the supervising court to close the file there.

**2) Supervising Court**

The supervising court is responsible for:

- a) notifying the sentencing court of needed amendments to the probation order.
- b) notifying the sentencing court of allegations that a probation violation may have occurred.
- c) preparing and submitting to the sentencing court a final report of the probationer's conduct while on probation. The final report should be submitted at least 30 days before the ordered termination date so the sentencing court has time to determine the appropriate course of action. The case may be closed in the supervising court after receiving a copy of the petition and order for discharge from the sentencing court.

**2. Transfers to Another State****a. Authority**

Out-of-state transfers are handled by way of the Interstate Compact, which is an agreement between states for cooperative effort and mutual assistance in preventing crime. It describes the responsibilities of the sending state and the receiving state. [MCL 3.1012]. The revised rules regulating transfer of probation are available at the Interstate Commission for Adult Offender Supervision website <http://www.adultcompact.org>.

Michigan's Interstate Compact office is located in Lansing at:

Interstate Compact  
Department of Corrections  
PO Box 30003  
Lansing, MI 48909  
(517) 335-1370

**b. Eligibility**

The Interstate Compact prohibits a misdemeanor offender under supervision in Michigan to relocate to another state without the other state's acceptance of the transfer of supervision. Effective January 1, 2005, in order to transfer under the compact the offender must have at least one year of supervision and the offense must include one or more of the following:

- An offense in which a victim has incurred direct or threatened physical or psychological harm;
- An offense that involves the use or possession of a firearm;
- A second or subsequent misdemeanor offense of driving while [intoxicated or] impaired by drugs or alcohol;
- An offense which requires sex offender registration in Michigan.

If an offender does not meet the above criteria and is allowed to go to another state without transfer through the Compact, the sending state would be held responsible for supervision and the offender's actions while in the other state.

1) Other eligibility requirements, all of which must be met are:

- a) At least three months left of supervision, AND
- b) Valid supervision plan in the other state, AND
- c) Substantial compliance with the terms of supervision, AND
- d) Resident of the other state or has resident family in the other state, AND
- e) Employable or has a visible means of support.

2) Transfer of Military Members

An offender who is a member of the military and has been deployed by the military to another state, and who meets the criteria in 1) a) and 1) e), shall be immediately eligible for transfer of supervision. In addition, an offender who meets the criteria in 1) a) and 1) e), and who lives with a family member who has been deployed by the military to another state, shall be immediately eligible for transfer of supervision, provided that the offender will live with the military member in the receiving state.

### 3) Transfer Due to Relocation for Employment

An offender who meets the criteria in 1) a) and 1) e), and whose family member, with whom he or she resides, is transferred to another state and obtains full-time employment, shall be immediately eligible for transfer, provided that the offender will live with the family member in the receiving state, unless the receiving state can show good cause for rejecting the transfer request.

#### **c. Procedure**

Specific forms must be completed and sent to the Interstate Compact Office in Lansing to initiate the transfer. Probation officers wanting further information should call the Interstate Compact Office in Lansing; the Office will provide a local contact in your county where the request for transfer forms may be obtained. Forms may also be obtained from the internet at the following link: [http://courts.michigan.gov/mji/adult\\_offender\\_sup.htm](http://courts.michigan.gov/mji/adult_offender_sup.htm).

The Interstate Compact provides for each member state to establish a transfer fee. Michigan has established a \$100 fee. Transfers from probation departments other than MDOC may establish any amount up to \$100, and retain the fee locally, to be deposited with the court funding unit.

#### **d. Limitations**

The Interstate Compact Office works with district court probation cases on a somewhat limited basis because of the relatively short time period a district court probationer is on probation. Except for stalking convictions, the maximum time period of probation for offenders in the district court is two years with many probationers receiving terms of six months or one year. It is not recommended that a transfer application be initiated unless the probationer has at least six months remaining on the probation term.

## **7-07 EXTENSION**

### **A. Authority**

At the end of the probation period, the probation officer must report the fact to the court and report the conduct of the probationer during the term of probation. The court may extend the probation period as circumstances may require as long as the maximum period of probation is not exceeded. [MCL 771.5] Except for stalking convictions, the maximum period for a term of probation for misdemeanor offenses is two years. [MCL 771.2(1)] Extensions are one option available to the court as the result of a probation violation. [MCR 6.445(G)]

### **B. Responsibility**

The probation order may be extended only by the court. This authority cannot be delegated to others. [People v Sutton, 322 Mich 104; 33 NW2d 681 (1948)] Therefore, probation officers do not have the authority to extend probation.

### **C. Circumstances**

1. A sentencing court may extend the period of probation even if there has been no probation violation as long as the statutory maximum is not exceeded. [People v Marks, 340 Mich 495; 65 NW2d 698 (1954)]
2. A probation order may be amended by the court to extend probation on an ex parte basis without given the probationer notice and an opportunity to be heard. [People v Kendall, 142 Mich App 576; 370 NW2d 631 (1985)]
3. The court may extend probation up to the statutory maximum upon finding a probationer has violated probation or upon receiving a plea of guilty regarding the charge of a probation violation. [MCR 6.445(G)]

### **D. Forms**

Petition/Order for Amendment of Order of Probation (SCAO Approved Form MC 244)

An example of the form can be found in the Section 7 Appendix.

## **7-08 DISCHARGE**

### **A. Authority**

Upon termination of the probation period, the probation officer must report the fact to the court, including the conduct of the probationer during the period of probation. The court may discharge the probationer from further supervision and enter a judgment of suspended sentence. [MCL 771.5(1)]

### **B. Reviewing the File**

The probation officer should review the probationer's file in a timely fashion to determine the probationer's compliance with the conditions of probation as of the last ordered day of probation.

The officer should:

1. carefully review the order for a listing of the conditions of probation and then compare case notes and documents verifying such activities as treatment, AA attendance, and community service work hours to verify each condition was successfully completed by the probationer;
2. verify that all fines, costs, restitution, and supervision fees have been paid in full. If restitution has not been paid, a report of nonpayment of restitution must be prepared (SCAO Approved Form, MC 258; see Section 6-13); and
3. obtain a current Criminal History from the Law Enforcement Information Network (LEIN) and a current driving record from the Secretary of State (SOS) to ensure that the probationer has not incurred any new arrests or convictions during the term of probation. (non-public record, see Chapter 8, page 8-02-01)

### **C. Conditions Not Met**

#### **1. Time Available for Extension**

If the probation officer is not satisfied that all conditions have been met, this information must be provided to the judge. The judge may extend the probation period for additional supervision, granting time for the probationer to complete the ordered conditions. A formal written extension order should be prepared, clearly stating the provisions so the probationer knows what he or she must do to comply. Oral, unrecorded instructions are not valid since they cannot be filed or entered on the court record. [MCL 771.2(2)]

#### **2. Time Unavailable for Extension**

If the probation period cannot be extended because the maximum period has already been met, the probationer must be discharged or the probation order must be revoked depending on the circumstances.

### **3. Recovering Fines, Costs, and Other Fees**

Except for the payment of restitution, forensic fees, and Crime Victim Rights Assessment ordered in the judgment of sentence and made a condition of probation, the court is prohibited from collecting unpaid fines, costs, and other fees once the probationer is discharged or the probation is revoked. Because of this fact, the court should order costs only if "the probationer is or will be able to pay them during the term of probation." [MCL 771.3(6)(a)] (See Section 3-04 for further details on recovering expenses.)

Under MCL 780.826(11) and (13), if the defendant is placed on probation, any restitution order under the Crime Victim's Rights Act shall be a condition of that probation. In addition, an order of restitution entered under the Crime Victim's Rights Act remains effective until it is satisfied in full. (See Section 6-10 for further information.)

### **D. Conditions Met**

If the probation officer is satisfied that the conditions of probation have all been met, the officer should prepare a petition for discharge from probation (SCAO Approved Form MC 245) and present it to the judge.

### **E. Early Discharge**

There are occasions when a probationer may receive an early discharge from probation. The petition and order for discharge should clearly state the reasons for an early discharge.

### **F. Other Reasons for Discharge**

Probation discharges may be issued for reasons other than satisfactory completion of probation. The following are some examples:

1. Probationer has died. The petition and order for discharge must be accompanied by a death certificate which can be obtained from a family member of the probationer, the Bureau of Vital Statistics, or the office of the city or county clerk.
2. Probationer has disappeared for a lengthy period of time. If the probationer is found in satisfactory circumstances, the court may discharge him or her without punitive action.
3. Probationer has disappeared for a lengthy period of time and the likelihood of the probationer being located is remote. After 7 to 10 years, a discharge will eliminate the warrant for arrest from the LEIN.
4. Probationer appears to be incapable of improving his or her life circumstances but is not considered at risk of committing serious crimes.

5. Probationer technically complied with the terms of probation but has shown no improvement in attitude and remains at risk for further legal offense.
6. Probationer is unable to meet the full obligations of the order but has made a "good faith" effort to meet those terms which were possible or made reasonable approximations of the specific terms.
7. Probationer is cited as a probation violator and discharged as such.

### **G. Record of Discharge**

When a probationer is discharged, the discharge must be made in the records of the court. A copy of the discharge order should be placed in the probation file, and a copy should be given to the probationer. All warrants for arrest must be recalled (SCAO Approved Form MC 220). [MCL 771.6]

### **H. Forms**

1. Motion and Order for Discharge from Probation (SCAO Approved Form MC 245)
2. Warrant Recall (SCAO Approved Form MC 220)

Examples of the forms can be found in the Section 7 Appendix.



## **7-09 PROTECTION AGAINST POSSIBLE EXPOSURE TO HIV, HBV, HCV**

### **A. Authority**

If a county employee or court employee who, while performing his or her official duties or otherwise performing the duties of his or her employment, determines that he or she has sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of an arrestee or probationer, he or she may request that the arrestee or probationer be tested for HIV infection, HBV infection, or HCV infection under MCL 333.5204 only if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

### **B. Request for Testing**

#### **1. Request Form**

A probation officer who desires to make a request as described above shall make the request to his or her employer in writing on a form provided by the Department of Community Health as soon as possible, but not later than 72 hours, after the exposure occurs. The request form shall be dated and shall contain, at a minimum, the name and address of the officer and a description of his or her exposure to the blood or other body fluids of the probationer. The request form shall also contain a statement that the probation officer is subject to the confidentiality requirements of MCL 333.5131 and MCL 333.5204(7). The request form shall not contain information that would identify the probationer by name except if necessary to identify the individual for purposes of testing. [MCL 333.5204(3)]

#### **2. Employer Responsibility**

The probation officer's employer shall accept as fact the probation officer's description of his or exposure to blood or other body fluids and shall have the test(s) performed by the local health department or by a health care provider designated by the local health department. If the probationer consents to the performance of the test(s) named in the requests, the probation officer's employer shall have the probationer transported to the place of testing. [MCL 333.5204(4)] If the probationer refuses to undergo testing, the probation officer's employer may proceed with a petition to the family division of the circuit court or to the appropriate district court (see C. Petition for Testing on page 7-09-02).

#### **3. Probation Officer Responsibility**

In addition to preparing the request for testing, the probation officer is responsible for the reasonable and customary charges of each test if not payable by the employer. [MCL 333.5204(5)]

**C. Petition for Testing**

If the probationer refuses to undergo testing requested by the probation officer, his or her employer may petition the circuit or local district court for the county in which the employer is located for an order requiring the probationer to undergo testing. [MCL 333.5205(3), (7)] (SCAO Approved form MC 72 in the Appendix) A hearing before a judge is required within 24 hours of the date and time the petition is filed.

The circuit court shall not issue an order unless the court first considers the recommendation of a review panel appointed by the court to review the need for testing the probationer. Additional forms have been created for the circuit court procedure.

For more details, see MCL 333.5204 and 333.5205. See the Appendix for a copy of the Department of Community Health's request form.

## APPENDIX 7

Referral

Face Sheet

Proof of Attendance at AA Meetings

AA Group Sign-In Sheet

Supervision Report

Case Activity Sheet

Probation Sign-In Sheet

Michigan Sex Offender Registration

Notice to Appear (MC 06)

Advice of Rights (DC 213)

Recall of Warrant (MC 220)

Petition and Order for Court Appointed Attorney (MC 222)

Advice of Rights, Probation Revocation (sample)

Motion, Affidavit, and Bench Warrant (MC 229)

Order of Probation (DC 243)

Petition and Order for Amendment of Order of Probation (MC 244)

Motion and Order for Discharge from Probation (MC 245)

Motion, Affidavit, and Summons Regarding Probation Violation (MC 246)

Report of Nonpayment of Restitution (MC 258)

Officer/Employee Request Form for HIV/HBV/HCV Testing (AP 116)

Petition for Testing of Infectious Disease (MC 72)